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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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EXAMINER	
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ART UNIT	**PAPER NUMBER**
3727	

DATE MAILED: 01/24/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	09/757,362	CHASTEEN ET AL.	
	Examiner	Art Unit	
	Robin A. Hylton	3727	

-- The MAILING DATE of this communication appears on th cover sheet with the correspond nce address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *20 August 2004*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1 and 3-24* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1 and 3-24* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

Specification

1. The disclosure is objected to because of the following informalities: at page 12, line 11, "Mor specifically" should be -- More specifically --. Appropriate correction is required.

2. The specification is objected to as failing to provide proper antecedent basis for the claimed subject matter. See 37 CFR 1.75(d)(1) and MPEP § 608.01(o). Correction of the following is required: "A metallic, small opening beverage can end closure adapted for receiving and *retaining* a drinking straw" and "The combination of a metallic beverage can end closure with a small opening and a drinking straw adapted for insertion and *retention* therein".

Claim Objections

3. Claim 20 is objected to because of the following informalities: at line 10, "central panel" should be --said central panel --. Appropriate correction is required.

Claim Rejections - 35 USC § 112

4. Claims 1,3-24 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claims contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventors, at the time the application was filed, had possession of the claimed invention. There is no support in the disclosure as originally filed for "retaining a drinking straw", "retention" of the straw, the "opening having a diameter no greater than about 0.3125 inches", "the drinking straw having an outer diameter substantially no greater than said substantially circular opening", and the "substantially centrally disposed circular opening defined by a score line having a first diameter no greater than about an external diameter of said drinking straw". See pages 5 and 12. The disclosure only sets forth the diameter of the straw being substantially equivalent to the diameter of the straw.

Claim R jections - 35 USC § 103

5. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

6. Claims 1,4,7-10, and 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over by Aomatsu (JP 11-49209).

The lid is disclosed for a PET bottle, but is capable of being applied to a metallic beverage can having screw threads. The disclosure is silent regarding specific dimensions of the small opening and the vent opening and the type of material used.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to utilize a metallic material for the beverage can end, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the small opening with a diameter no greater than about 0.3125 inches and the vent opening area of 0.0004 inches, since it has been held that discovering an optimum value of a result effective variable involves only routine skill in the art.

7. Claims 1,4,6-12,14,15,17, and 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Tashiro et al. (JP 2000-226029) in view of Aomatsu.

Tashiro teaches a can end closure having a small opening for receiving a straw, the small opening "need be only of a size adequate for inserting" a straw and having a maximum length of 10mm and allowing venting of the can while the straw is therein. Wherein the straw has a size for inserting the straw, it is of a size to retain the straw therein. Tashiro does not teach the small opening is substantially circular nor specific dimensions of the other can end portions.

Aomatsu teaches it is known to provide a can end closure with a substantially circular opening for receiving a straw therein and a small vent opening adjacent the circular opening.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to apply the teaching of a substantially circular opening for receiving a straw therein and a small vent opening adjacent the circular opening to the can end of Aomatsu. Doing so is an obvious matter of design choice which inherently provides a more spill-resistant can end.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the small opening with a diameter no greater than about 0.3125 inches, the venting area of at least 0.004 inches, and a score line surface area no greater than about 0.1503 inches, since it has been held that discovering an optimum value of a result effective variable involves only routine skill in the art. Doing so optimizes the

8. Claims 3 and 5 are rejected under 35 U.S.C. 103(a) as being unpatentable over the prior art as applied to claim 1 above, and further in view of Hanson (US 4,184,605)

Tashiro as modified teaches the claimed can end except for a bead inhibiting detachment of a tab from the can end.

Hanson teaches it is known to provide a bead proximate the hinge and/or termination point of the score line to inhibit detachment of a tab from the can end.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to apply the teaching of provide a bead proximate the hinge and/or termination point of the score line. Doing so inhibits detachment of a tab from the can end upon opening.

9. Claims 13, 16, and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over the prior art as applied to claims 1 and 14 above, and further in view of Forbes (US 4,923,083).

Tashiro as modified teaches the claimed can end except for a reinforcing bead which also provides a shroud at the leading edge of the circular opening.

Forbes teaches it is known to provide a reinforcing bead providing a shroud the leading edge of a circular opening of a scored can end.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to apply the teaching of a shroud to the modified can end of Tashiro. Doing so prevents accidental cuts caused by an exposed open score line.

10. Claims 20,22, and 23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Tashiro in view of Aomatsu.

Tashiro teaches a can end having a small opening for receiving a straw, the small opening having a maximum length of 10mm and allowing venting of the can while the straw is therein. Tashiro does not teach the small opening is substantially circular nor specific dimensions of the other can end portions. Wherein the straw "need be only of a size adequate for inserting the straw", it is of a size to retain the straw therein.

Aomatsu teaches it is known to provide a can end with a substantially circular opening for receiving a straw therein and a small vent opening adjacent the circular opening.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to apply the teaching of a substantially circular opening for receiving a straw therein and a small vent opening adjacent the circular opening to the can end of Aomatsu. Doing so is an obvious matter of design choice which inherently provides a more spill-resistant can end having a straw for drinking the beverage without one's lips contacting the can end.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the venting area of at least 0.004 inches, since it has been held that discovering an optimum value of a result effective variable involves only routine skill in the art.

11. Claim 21 is rejected under 35 U.S.C. 103(a) as being unpatentable over the prior art as applied to claim 20 above, and further in view of Hanson (US 4,184,605)

Tashiro as modified teaches the claimed can end closure and drinking straw combination except for a bead inhibiting detachment of a tab from the can end closure.

Hanson teaches it is known to provide a bead proximate the hinge and/or termination point of the score line to inhibit detachment of a tab from the can end closure.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to apply the teaching of provide a bead proximate the hinge and/or termination point of the score line. Doing so inhibits detachment of a tab from the can end closure upon opening.

12. Claim 24 is rejected under 35 U.S.C. 103(a) as being unpatentable over the prior art as applied to claim 20 above, and further in view of Peterson et al. (US 3,438,578).

Tashiro as modified teaches the claimed can end closure and drinking straw combination except for the straw having a corrugated mid-section.

Peterson teaches it is known to use a corrugated straw for drinking a beverage.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to further apply the teaching of a corrugated mid-section to the straw of Tashiro's combination. Doing so allows one to drink from the associated container in a reclined position without spilling the beverage therein.

13. Claims 1,4, and 7-12, are rejected under 35 U.S.C. 103(a) as being unpatentable over Traub, Sr. et al. (US 5,819,973) in view of Boindich et al (US 5,772,561).

Traub teaches a can end closure having a substantially circular opening **30**, a non-detachable pull tab **25**, and a vent opening **13** positioned adjacent the substantially circular opening. Regarding claim 7, it is noted the pull tab is pulled in one direction only for fracturing the score line (then pushed back). Regarding claim 12, the substantially circular opening is "proximate a central portion" of the central panel (see figures 1 and 2). Traub is silent regarding specific dimensions of the substantially circular opening and the vent opening, but at column 5, lines 1-6 indicate the sizes are obvious to one of ordinary skill in the art.

Boindich teaches it is known to provide a small opening in can end closure which is adapted for receiving and retaining a drinking straw, wherein the small opening is approximately 5.54 mm in diameter.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to apply the teaching of a small diameter opening to the can end closure of Traub. Doing so provides a can end closure which requires less force to opening and allows for a straw to received and retained within a can end closure opening to provide a spill-resistant arrangement.

14. Claims 3 and 5 are rejected under 35 U.S.C. 103(a) as being unpatentable over the prior art as applied to claim 1 above, and further in view of Hanson.

Traub as modified teaches the claimed can end closure except for a bead inhibiting detachment of a tab from the can end.

Hanson teaches it is known to provide a bead proximate the hinge and/or termination point of the score line to inhibit detachment of a tab from the can end closure.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to apply the teaching of provide a bead proximate the hinge and/or termination point of the score line. Doing so inhibits detachment of a tab from the can end closure upon opening.

15. Claim 13 is rejected under 35 U.S.C. 103(a) as being unpatentable over the prior art as applied to claims 1 and 14 above, and further in view of Forbes.

Traub as modified teaches the claimed can end closure except for a reinforcing bead providing a shroud the leading edge of the circular opening.

Forbes teaches it is known to provide a reinforcing bead providing a shroud the leading edge of a circular opening of a scored can end closure.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to apply the teaching of a shroud to the modified can end closure of Traub. Doing so prevents accidental cuts caused by an exposed open score line.

16. Claims 20,22 and 23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Traub in view of Boindich et al.

Traub teaches a can end closure having a substantially circular opening **30**, a non-detachable pull tab **25**, and a vent opening **13** positioned adjacent the substantially circular opening. Traub is silent regarding specific dimensions of the substantially circular opening and the vent opening, but at column 5, lines 1-6 indicate the sizes are obvious to one of ordinary skill in the art.

Boindich teaches it is known to provide a small opening in can end closure which is adapted for receiving and retaining a drinking straw, wherein the small opening is approximately 5.54 mm in diameter.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to apply the teaching of a small diameter opening to the can end closure of Traub. Doing so provides a can end closure which requires less force to opening and allows for a straw to received and retained within a can end closure opening to provide a spill-resistant arrangement.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to locate the substantially circular opening substantially centrally on the central panel, since it has been held that rearranging parts of an invention involves only routine skill in the art. Doing so provides a more spill-resistant can end closure.

Regarding claim 23, it would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the venting area of at least 0.004 inches, since it has been held that discovering an optimum value of a result effective variable involves only routine skill in the art.

17. Claim 21 is rejected under 35 U.S.C. 103(a) as being unpatentable over the prior art as applied to claim 20 above, and further in view of Hanson.

Traub as modified teaches the claimed can end closure and drinking straw combination except for a bead inhibiting detachment of a tab from the can end closure.

Hanson teaches it is known to provide a bead proximate the hinge and/or termination point of the score line to inhibit detachment of a tab from the can end closure.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to apply the teaching of provide a bead proximate the hinge and/or termination point of the score line. Doing so inhibits detachment of a tab from the can end closure upon opening.

18. Claim 24 is rejected under 35 U.S.C. 103(a) as being unpatentable over the prior art as applied to claim 20 above, and further in view of Peterson.

Traub as modified teaches the claimed can end closure and drinking straw combination except for the straw having a corrugated mid-section.

Peterson teaches it is known to use a corrugated straw for drinking a beverage.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to further apply the teaching of a corrugated mid-section to the straw of Traub's combination. Doing so allows one to drink from the associated container in a reclined position without spilling the beverage therein.

Response to Arguments

19. Applicant's arguments, see page 2, paragraph 2, filed August 20, 2004, with respect to the rejection(s)of claim(s) 1,2-24 under 35 USC 103 have been fully considered and are persuasive. Therefore, the rejection has been withdrawn. However, upon further consideration, a new ground(s) of rejection is made in view of Traub, Tashiro, Aomatsu, Biondich, Hanson, and Forbes.

Regarding the rejections utilizing Tashiro and Aomatsu, wherein the instant claims are directed to a can end closure having a pull tab which upon exertion of an upward force creates an opening and vent opening, the prior art is analogous since each teaches a can end closure

having a pull tab which upon exertion of an upward force creates an opening in the central panel.

Conclusion

20. This Office action is made non-final in view of the repeated obviousness rejections directed to Tashiro in view of Aomatsu.

21. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Various prior art closures teaching features similar to those disclosed and/or claimed are cited for their disclosures.

22. In order to reduce pendency and avoid potential delays, Group 3720 is encouraging FAXing of responses to Office Actions directly into the Group at (703) 872-9306. This practice may be used for filing papers not requiring a fee. It may also be used for filing papers which require a fee by applicants who authorize charges to a PTO deposit account. Please identify the examiner and art unit at the top of your cover sheet. Papers submitted via FAX into Group 3720 will be promptly forwarded to the examiner.

23. It is called to applicant's attention that if a communication is faxed before the reply time has expired, applicant may submit the reply with a "Certificate of Facsimile" which merely asserts that the reply is being faxed on a given date. So faxed, before the period for reply has expired, the reply may be considered timely. A suggested format for a certificate follows:

I hereby certify that this correspondence for Application Serial No. _____ is being facsimiled to The U.S. Patent and Trademark Office via fax number (703) 872-9306 on the date shown below:

Typed or printed name of person signing this certificate

_____

Signature_____

Date_____

24. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robin Hylton whose telephone number is (571) 272-4540. The examiner can normally be reached Monday - Friday from 9:00 a.m. to 4:00 p.m. (Eastern time).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lee Young, can be reached on (571) 272-4549.

If in receiving this Office Action it is apparent to applicant that certain documents are missing, e.g., copies of references cited, form PTO-1449, form PTO-892, etc., requests for copies of such papers should be directed to Errica Miller at (571) 272-4370.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 308-1148 or may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

RAH
January 20, 2005

Robin A. Hylton
Primary Examiner
GAU 3727